

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: PLN2012-00046

APPLICANT: Glen Sterley ¹
6607 61st Avenue SE
Snohomish, WA 98290

TYPE OF CASE: Preliminary subdivision (*Lake Vista*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to revised conditions

DATE OF DECISION: February 25, 2014

INTRODUCTION ²

Glen Sterley (Sterley) seeks preliminary approval of *Lake Vista*, an 18 lot single-family residential subdivision of a 5.54 acre site, owned by Sterley, which is zoned R-6.

Sterley filed a Base Land Use Application on October 29, 2012. (Exhibit S1.1 ³) The Sammamish Department of Community Development (the Department) deemed the application to be complete as of November 14, 2012. (Exhibit S-1.9)

The subject property is located at 704 East Lake Sammamish Parkway SE, in the northeast quadrant of the East Lake Sammamish Parkway SE/SE 8th Street intersection.

¹ Spelled as shown on the Base Land Use Application, Exhibit S-1.1.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

The Sammamish Hearing Examiner (Examiner) viewed the subject property on February 19, 2014.

The Examiner held an open record hearing on February 19, 2014. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibit S-1.49)

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivisions be issued within 120 net review days after the application is found to be complete. The open record hearing was held on or about net review day 214.⁴ The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or a letter from the Department explaining why the deadline was not met [SMC 20.05.100(3)]. The Department provided Sterley with a written explanation. (Exhibit S-1 {p. 3, § 3(g)})

The following exhibits were entered into the hearing record during the hearing:

Exhibit S-1:	Departmental Staff Report
Exhibits S-1.1 – S-1.49:	As enumerated in Exhibit 1
Exhibit S-2:	Rich Seiler hearing statement, with Attachments Exhibits S-2a – S-2h
Exhibit S-3:	E. R. McRae hearing statement
Exhibit S-4:	Letter, Tom & Lisa Nielsen, December 16, 2012

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. The *Lake Vista* site is a near rectangle located in the northeast quadrant of the East Lake Sammamish Parkway SE/SE 8th Street intersection whose northwest corner is truncated by East Lake Sammamish Parkway SE. The property has approximately 624 feet of frontage along the north side of SE 8th Street and a north-south dimension of approximately 416 feet. The property has approximately 295 feet of frontage on the east side of East Lake Sammamish Parkway SE. The site contains 241,528 square feet (SF) or 5.54 acres.⁵ (Exhibit S-1.2 and S-1.3)

The site contains a dilapidated residence, a barn, a few small sheds, and remnant fencing. The eastern edge of the property is forested. Open meadow and blackberry brambles cover most of the site. A few Douglas-fir, cottonwood and cherry trees are present. Overgrown ornamental landscaping surrounds the house. A stand of red

⁴ Exhibit S-1 {p. 3, § 3(g)} states that January 22, 2014, was net review day 186. Twenty-eight days elapsed between that date and the date of the hearing.

⁵ Subsection 21A.25.070(4) SMC uses two decimal places in yield calculations. Therefore, to be consistent, area and yield calculations throughout this Decision will be stated to two decimal places.

alder, big leaf maple, western red cedar, and Douglas-fir with a native shrub understory is supported in the southwest corner of the site.

(Exhibit S-1.13 {p. 5})

2. The site is bordered on most of its west side by East Lake Sammamish Parkway SE. A small triangular area is sandwiched between the southwest corner of the subject property and East Lake Sammamish Parkway SE. That area has about 75 feet of frontage along SE 8th Street, 170 feet of frontage along East Lake Sammamish Parkway SE, and borders the west edge of the subject property by about 150 feet. It consists of all or portions of two parcels owned by Chamberlin and Benner. (Exhibits S-1.2, S-1.3, and S-2 {Unnumbered p. 4})

Adjacent to the west side of the East Lake Sammamish Parkway SE right-of-way is the East Lake Sammamish Trail (ELST) right-of-way. The ELST right-of-way is 100 feet wide in this area. The ELST is constructed within that right-of-way. (Exhibits S-1.2 {Sheet 1 of 9} and S-1.3) West of the ELST right-of-way are single-family residences fronting on Lake Sammamish. The residential property that lies west of the ELST and immediately north of an imaginary westerly extension of the subject property's south line is owned by Chamberlin. (Exhibits S-1.3 and S-1.27)

3. The site is bordered on its north by a large parcel containing a single-family residence. (Exhibit S-1.3)
4. The site is bordered on its east by two of four lots in a short subdivision developed by the Seilers, owners of the lot bordering the majority of the site's east boundary. The Seilers's lot contains approximately 1.4 acres and a large house with detached garage. (Exhibits S-1.3, S-2, S-2a, and S-2c)
5. Two single-family subdivisions, *Joy Luck* and *Ashton Woods*, lie across SE 8th Street from both the subject property and the Seilers's short platted lots.⁶ Residential lots in those two subdivisions range from about 6,800 SF to over 12,500 SF. Both subdivisions include significant open space tracts. (Exhibits S-1.3, S-1.15 {Fig. 3}, S-2d, and S-2e) Both subdivisions were approved prior to incorporation of the City in 1999; they were developed in the 1999 – 2000 time period. (Exhibit S-1.28b and testimony)

The four lots at the south end of 197th Place SE are not within either the *Joy Luck* or *Ashton Woods* subdivisions. Rather, they are metes and bounds parcels served by a private cul-de-sac and private street. Three of those parcels contain between 30,000 SF and 324,000 SF. (The area of the fourth lot is not contained in the hearing record, but it extends to East Lake Sammamish Parkway SE and contains an eagle's nest.⁷) (Exhibits S-1.15 {Fig. 3}, S-2d, and S-2e)

⁶ Although it is clear from the record that there are two abutting subdivisions with different names, the testimony in the record suggests that residents refer to both as *Ashton Woods*.

⁷ See Finding of Fact 24, below.

6. The area's zoning pattern was established by King County before Sammamish became an incorporated city in 1999. (Exhibit S-2 and official notice) In 2003 the City adopted its own Comprehensive Plan and implementing regulations under the Growth Management Act of 1990, Chapter 36.70A RCW (GMA). The City has left the zoning of the subject property unchanged through that process. (Official notice)

The subject property as well as parcels to the north and east, together with the *Joy Luck* and *Ashton Woods* subdivisions are designated on the City's adopted Comprehensive Plan R-6 and zoned R-6, residential development at a maximum density of six dwelling units per acre, just as they were under the prior King County jurisdiction. Properties to the north and east of the R-6 area as well as those lots west of the ELST are designated/zoned R-4 (residential with a maximum density of four dwelling units per acre); properties between East Lake Sammamish Parkway SE and *Joy Luck*, as well as properties south of *Joy Luck* and *Ashton Woods* (including the four lots described at the end of Finding of Fact 5, above) are designated/zoned R-1 (residential with a maximum density of one dwelling unit per acre). Two other R-6 zoned clusters lie a short distance north and south of the subject property on the east side of East Lake Sammamish Parkway SE. (Exhibits S-1 and S-2c and Comprehensive Plan {Fig. III-2})

7. The City's adopted Comprehensive Plan states that the City is required under GMA to plan for at least 3,842 new dwelling units between 2001 and 2022. The Comprehensive Plan adopted a growth target of 4,858 new dwelling units by 2022. [Comprehensive Plan, p. III-3]
8. The maximum permissible lot yield under the subject property's R-6 zoning, calculated in accordance with procedures spelled out in the SMC, is 17 dwelling units before considering any incentives (241,528 SF – 24,329 SF for right-of-way – 95,642 SF environmentally critical areas and buffers = 121,557 net SF = 2.79 net acres x 6 units per net acre = 16.74 dwelling units). (Exhibit S-1 {p. 4}) Fractional results "of 0.50 or above shall be rounded up", those "below 0.50 shall be rounded down." [SMC 21A.25.070(4)] Therefore the maximum permissible lot yield, before considering incentives is 17 dwelling units. (Exhibit S-1 {p. 4}) Sterley has used tree retention incentives to gain one additional lot. (See Finding of Fact 14, below.)
9. Most of the site exhibits a very gentle slope towards East Lake Sammamish Parkway SE. A fairly sharp 20 foot rise occurs along the east edge of the site. A Class 3 wetland lies at the base of that slope. Class 3 wetlands require a 50 foot protective buffer. (Exhibits S-1.10 – 1.13 and S-1.17)
10. The subject property is underlain by glacial till and, as a result, exhibits perched water conditions.⁸ (Exhibit S-1.23)

⁸ A "perched water condition" occurs when surface water infiltrates a short distance into the soil before encountering a relatively impermeable layer such as glacial till. The water then finds it easier to flow laterally above the till than to percolate through the till. (Official notice)

11. Sterley proposes to protect the Class III wetland with the code-required 50 foot buffer. (The southern edge of the wetland is only about 30 feet north of the northerly curb on SE 8th Street. (Exhibit S-1.2 {Wetland Sheet 1 of 2}) The City allows wetland buffers to be truncated where they intersect a public street. [SMC 21A.50.290(2)(d)] In order to meet City sidewalk requirements along SE 8th Street, the sidewalk will have to be built within the buffer. To minimize that impact, the City has agreed to allow elimination of a planter strip where the sidewalk passes the wetland. Approximately 1,009 SF of the buffer will be disturbed due to the sidewalk construction. The wetland buffer will be expanded along its east edge by the same amount as offsetting mitigation. (Exhibit S-1.2 {Wetland Sheet 2 of 2}) The wetland and its buffer will be contained in Tract D. (Exhibit S-1.2 {Sheet 1 of 9})

All lots will be served by a short, public cul-de-sac intersecting SE 8th Street in alignment with 197th Place SE in *Joy Luck*. The standard minimum right-of-way width for such a street is 57 feet and the standard pavement width is 36 feet. The City Engineer may allow parking on one side only on cul-de-sacs. [Interim Public Works Standards (PWS) {Table 1 and Fig. 01-05}] The City Engineer may authorize “variations” from the PWS. [PWS.10.170] The City Engineer has granted variations to allow parking on one side only (thus reducing the pavement width from 36 feet to 28 feet) and a reduced right-of-way width from 57 feet to 50 feet. (Exhibits S-1, S-1.2 {Sheet 6 of 9}, and S-1.20)

The proposed lots range from 4,000 SF to 7,863 SF. The proposed average lot size is 5,330 SF. (Exhibit S-1.2 {Sheet 1 of 9}) The City’s development standards do not set minimum lot sizes for any residential zone anywhere in the City. [SMC 21A.25.030(A)] All proposed lots meet applicable zoning standards: 20 foot front setback for garages, 10 foot front setback for the remainder of the dwelling, five (5) foot interior setback, and minimum lot width of 30 feet. (Exhibits S-1 {p. 4} and S-1.2)

The proposed plat contains an open space tract along its east edge (Tract E), a stormwater vault/play area tract in its southwest corner (Tract A), and two private driveway/road tracts serving several of the proposed lots (Tracts B and C). (Exhibit S-1.2 {Sheet 1 of 9})

12. The City has adopted tree retention requirements. [SMC 21A.35.210 - .240] New subdivisions must retain at least 25% of all “significant” trees ⁹ located outside of protected sensitive areas [SMC 21A.35.210(2)(a)] and essentially all significant trees located within protected environmentally sensitive areas [SMC 21A.35.210(2)(b)] There is a proviso associated with the retention requirement: “trees retained within environmentally sensitive areas and associated buffers may be counted for up to 50 percent of the tree retention requirement in subsection (2)(a) of this section.” [SMC 21A.35.210(2)(b)] Further, up to 50% of the trees to be retained may be replaced by new trees upon approval by the Department; replacement ratios range from 4:1 to 8:1 depending upon the size of the tree to be replaced. [SMC 21A.35.210(6) and .240(1)(c)]

The regulations include criteria for selecting which trees to retain on a development site:

⁹ The SMC defines a “significant tree” as either a coniferous tree with a diameter at breast height (DBH) of 8” or more or a deciduous tree with a DBH of 12” or more. [SMC 21A.15.1333]

- (a) Trees located within healthy, vegetated groups and stands rather than as isolated trees scattered throughout the site;
- (b) Trees that have a reasonable chance of survival once the site is developed;
- (c) Trees that will not pose a threat to persons or property;
- (d) Trees that can be incorporated into required landscaping or can be used to screen the site from adjacent properties;
- (e) Trees adjacent to open space, sensitive area buffers or sensitive area tracts;
- (f) Trees having a significant land stability function; or
- (g) Trees that meet the definition of heritage tree.

[SMC 21A.35.210(5)]

13. The subject property contains 74 significant trees, 31 of which are located outside the wetland or its required buffer. (Exhibit S-1.2 {Sheet 9 of 9}) Pursuant to SMC 21A.35.210(2)(a), eight (8) (25% of 31 = 7.75) significant trees outside of sensitive areas and the 43 significant trees within the sensitive area tract must be retained.

Sterley proposes to retain 11 significant trees outside environmentally sensitive areas (35.5% of 31) plus the 43 trees within Tract D, for a total of 54 significant trees retained. The retained trees outside Tract D are with but one exception all located within open space Tract E along the east edge of the plat. (Exhibit S-1.2 {Sheet 9 of 9})

14. Section 21A.35.220 SMC provides incentives to encourage retention of more trees than required by SMC 21A.35.210 “subject to City review and approval”. [SMC 21A.35.220] New subdivisions which retain “30 percent or more” of significant trees outside environmentally sensitive areas may reduce “recreation space by up to 10 percent”. [SMC 21A.35.220(1)] New subdivisions which retain “35 percent or more” of significant trees outside environmentally sensitive areas may “include up to 10 percent of the area within environmentally sensitive areas towards site density calculations.” [SMC 21A.35.220(2)]

As noted above, Sterley proposes to retain retain 11 significant trees (35%) outside environmentally sensitive areas. Sterley has applied the full 10% bonus towards the site density calculation to achieve the proposed yield. (Exhibits S-1 and S-1.2)

15. “Streets and highways are most effectively classified by their function, according to the character of the service they are intended to provide.” [Public Works Standards (PWS).15.050.A, ¶ 1] Section PWS.15.050.A lists a number of City arterials “to assist the developer in determining the classification of a particular street. ... If a street or portion of a street is not listed, ... the Public Works Department [shall] determine the correct street classification.” [PWS.15.050.A, ¶ 6]

East Lake Sammamish Parkway SE is a designated minor arterial whose average daily traffic (ADT) volume in the vicinity of SE 8th Street is about 10,000. East Lake Sammamish Parkway SE has a posted speed limit of 35 miles per hour (mph) and, thus, a design speed of 40 mph. SE 8th Street is a local access, non-through street. (Exhibits 1.24 and 1.25)

“Minor arterials interconnect with and augment the principal arterial system. Minor arterials connect principal arterials to collector arterials and small generators. ... The design year ADT [Average Daily Traffic] is approximately 2,500 to 15,000.” [PWS.15.050.B.2]

“The local street system consists of local access and minor access streets. [PWS.15.050.B.4] “Local feeder streets serve as primary access to the development from the adjacent street system. They distribute traffic from local or minor streets in residential neighborhoods and channel it to the arterial system. ... Typical ADT may range from about 400 to 1,500. Abutting residences are oriented away from the feeder.” [PWS.15.050.B.4.a] “[Minor access streets] are typically internal subdivision streets providing circulation within the subdivision or between subdivisions. ... Typical ADT may range from about 300 to 1,000.” [PWS.15.050.B.4.b]

16. “All developments ... shall install street frontage improvements at the time of construction pursuant to these standards. Such improvements shall include curbs, gutters, ... planter strips, ... sidewalks, and street widening all [pursuant to] these standards.” [PWS.15.110.A] The adopted design standards for all classifications of public streets include curb, gutter, planter strip, and sidewalk on both sides. [PWS Figs. 01-01, 01-02, 01-03, and 01-05]

Frontage improvements consisting of curb, gutter, planter strip, and sidewalk will be required along the property's frontages on East Lake Sammamish Parkway SE and SE 8th Street. Since Sterley does not own the corner frontage (it is owned by Chamberlin and Brenner), typical frontage improvements at the corner could not be constructed without permission of the owners of that property. The City has encouraged Sterley to seek their permission for standard improvements. If permission is not forthcoming, the City is prepared to accept interim improvements within the existing right-of-way. (Exhibit S-1.2 {Sheet 6 of 9} and testimony) The plat has been designed so that no lots have to take access from East Lake Sammamish Parkway SE or SE 8th Street. (Exhibit S-1.2, Sheet 1 of 9)

17. Sight distance is calculated for a “design speed” which is typically 5 mph over the posted speed limit. Two types of sight distance are used in traffic engineering: Entering sight distance and stopping sight distance. Entering sight distance is the distance required for a vehicle on the side street to safely enter the traffic flow on the major street. Stopping sight distance is the distance required to safely stop when a low object is seen in the street ahead.

The required entering sight distance is 475 feet for a 40 mph design speed and 355 feet for a 30 mph design speed. The required stopping sight distance is 325 feet for a 40 mph design speed and 200 feet for a 30 mph design speed. Entering sight distance and stopping sight distance are met at both the

proposed plat street intersection with SE 8th Street and at the existing East Lake Sammamish Parkway SE/SE 8th Street intersection. (Exhibit S-1.25 {pp. 2 and 3})

18. Subsection 14.15.020(6) SMC requires that trip generation rates published by the Institute of Transportation Engineers (ITE) be used in predicting traffic volumes associated with proposed developments. The ITE rates for single-family detached housing are 9.57 trips per house on an average weekday (AWDT), 0.75 trips per house during the average weekday A.M. peak hour, and 1.01 trips per house during the average weekday P.M. peak hour.¹⁰ (Official notice)
19. Sterley's traffic consultant counted traffic volumes at the East Lake Sammamish Parkway SE/SE 8th Street intersection on Thursday, August 9, 2012, during a three hour block of time in the morning and again in the afternoon. During the peak hour in the morning, a total of 30 vehicles used SE 8th Street; during the peak hour in the afternoon, a total of 33 vehicles used SE 8th Street. (Exhibit S-1.24 {Appendix, pp. 2 and 3}) The evening peak hour typically carries 10% of the ADT. (Exhibit S-1.24 {p. 4}) Thus, by extrapolation, the ADT on SE 8th Street is around 330.
20. Sterley's traffic consultant also used Washington State Department of Transportation formulas to evaluate the need for turn lanes at the East Lake Sammamish Parkway SE/SE 8th Street intersection. Those analyses demonstrated that no turn lanes are warranted. (Exhibit S-1.26)
21. The City has adopted a Transportation Concurrency Management system to implement the transportation level of service policies within its comprehensive plan. [Chapter 14.15 SMC] Under Chapter 14.15 SMC, an applicant prepares and submits a transportation impact analysis (TIA) which is reviewed by the Department of Public Works (DPW). If the TIA demonstrates compliance with established levels of service, a concurrency certificate is issued.

A TIA was prepared and submitted. (Exhibits S-1.24 – S-1.26) On November 2, 2012, DPW issued a Certificate of Concurrency for *Lake Vista*. (Exhibit S-1.19)

The developer will be required to pay transportation impact fees under Chapter 14.20 SMC.¹¹ As of November 2, 2012, the estimated total fee was \$252,517.32. (Exhibit S-1.19) Sterley paid the required 10% deposit on November 14, 2012. (Exhibit S-1 {p. 3})

¹⁰ The A.M. and P.M. peak hours are the single hour in the morning and afternoon, respectively, during which the highest volumes of traffic are traveling on the local street system. (See SMC 14.05.010(20).) The "peak hour" does not represent the entire morning or afternoon "rush hour" unless the rush hour happens to last less than one hour. As everyone who lives in this region knows from personal experience, the morning and afternoon weekday rush hour each lasts much longer than one hour. Thus, the "peak hour" represents the single hour with the highest traffic volume within the entire "rush hour." (Official notice)

The SMC mandates use of the ITE rates unless the applicant wants to try to prove that some other rate is more appropriate. [SMC 14.15.020(6)] Staff has no authority to force a different rate on an applicant.

¹¹ Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

22. The record contains evidence that appropriate provisions have been made for:

- A. Open space. Proposed Tract A (13,074 SF) will house an underground stormwater detention vault above which will be a recreation area; Proposed Tract D (95,642 SF) will contain the wetland and its required undeveloped buffer; and Tract E (9,184 SF) will provide passive open space and tree retention along the eastern edge of the subdivision. In total, 117,900 SF (2.71 acres), approximately 49% of the total site, will be retained as open space. (Exhibit S-1.2)
- B. Drainage ways. Surface water from the upslope, east side of East Lake Sammamish Parkway SE in this area (which includes not only the subject property but also the lots served by SE 8th Street) flows westerly into a roadside ditch along East Lake Sammamish Parkway SE. A 24" culvert at the southeast corner of the East Lake Sammamish Parkway SE/SE 8th Street intersection conveys the runoff beneath East Lake Sammamish Parkway SE where it flows into a ditch/wetland area between East Lake Sammamish Parkway SE and the ELST. That ditch/wetland has two outlets, both of which eventually drain into Lake Sammamish. A 12" culvert near the south end of that area carries flows beneath the ELST and into a wet area from which they enter a 12" culvert system on the Chamberlin property. The other outlet is a 24" culvert beneath a shared access road at the north end of the area, after which flows travel northwesterly and then west into the lake. The invert elevation¹² of the 12" culvert is about six (6) inches lower than the invert elevation of the 24" culvert. Thus, during low flow periods, most runoff from east of East Lake Sammamish Parkway SE most likely takes that course. (Exhibit S-1.22 {p. 14, Appendix A, and Appendix B (Downstream Analysis Figure)} and testimony)

The City has adopted the 2009 King County Surface Water Design Manual (2009 KCSWDM) as its stormwater design manual. (Exhibit S-1 {p. 4}) The proposed subdivision is required to meet Level 2 Flow Control Standards, but has chosen to apply the more stringent Level 3 Flow Control Standards in order to avoid any possible downstream flooding problems. (Exhibit S-1.21 {p. 13}) The Level 3 Flow Control Standard requires that runoff from the developed site match predeveloped duration of flows between the range of one-half the 2-year design storm and the 50-year storm and also match the 2-, 10-, and 100- year predeveloped peak flow rates. (Exhibits S-1 {p. 4} and S.21 {p. 13})

Lake Sammamish, the receiving body for runoff in the area, is classified as a Sensitive Lake. Therefore, the subdivision is subject to Sensitive Lake Water Quality Treatment requirements. The proposed detention/wet vault combined with a stormwater filter to remove phosphorus will meet those requirements. (Exhibits S-1.20 {pp. 1 and 2} and S-1.21 {p. 14} and testimony)

¹² The "invert elevation" of a pipe is the elevation of the inside surface of the bottom of the pipe. It thus represents the elevation at which water will enter the pipe. (Official notice)

- C. Streets and roads. DPW has reviewed and approved the proposed public and private streets within *Lake Vista*. (Exhibit S-1.20) “The City Engineer has approved a modified pavement width of 28-ft, 50-ft ROW dedication, and No Parking on one side. The City Engineer may modify additional standards based on engineering judgment during final engineering review”. (Exhibit S-1.20 {p. 2})
- D. Alleys. The proposed design does not utilize alleys. (Exhibit S-1.2)
- E. Other public ways. No need for other public ways within the subdivision exists. (Exhibit S-1.2)
- F. Transit stops. The record contains no request for transit stops.
- G. Potable water supply. The Sammamish Plateau Water & Sewer District (SPWSD) issued a Certificate of Water Availability for *Lake Vista* on September 18, 2012. A little over one month later the preliminary subdivision application was filed, thus fulfilling the Certificate’s requirement that an application be filed within one year of issuance of the Certificate. (Exhibit S-1.6) In addition, Sterley has now entered into a Developer Agreement with SPWSD. (Exhibit S-1.8)
- H. Sanitary wastes. The SPWSD issued a Certificate of Sewer Availability for *Lake Vista* on September 18, 2012. A little over one month later the preliminary subdivision application was filed, thus fulfilling the Certificate’s requirement that an application be filed within one year of issuance of the Certificate. (Exhibit S-1.7) In addition, Sterley has now entered into a Developer Agreement with SPWSD. (Exhibit S-1.8)
- I. Parks and recreation. The SMC requires that the subdivision include not less than 7,020 SF of active recreation area within the subdivision (equal to 390 SF per lot). The proposal provides 15,721 SF of countable recreation area. (All of Tract E and one-half of Tract A may be counted.). (Exhibit S-1 {pp. 4 and 5}) Since Tract E is inaccessible without crossing critical areas Tract D, the Department states that a trail from SE 8th Street will have to be provided. (Exhibit S-1 {p. 5} and testimony) Trails may be constructed within the outer 25 percent of wetland buffers. [SMC 21A.50.300(8)] The required trail is not depicted on Exhibit S-1.2; the required trail is not listed as a recommended condition in Exhibit S-1.

In addition, the developer will have to pay a park impact fee pursuant to Chapter 14A.20 SMC.¹³ (Exhibit S-1 {Recommended Condition 42})
- J. Playgrounds. See Finding 22.I, above.

¹³ Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

- K. Schools and schoolgrounds. Lots within *Lake Vista* are subject to Chapter 21A.105 SMC which imposes school impact fees on new single family dwelling units to fund school system improvements needed to serve new development.¹⁴ (Exhibit S-1 {p. 5})
- L. Safe walking conditions for students who only walk to and from school. SE 8th Street is the dividing line (at least in this area) between the Issaquah School District to the south and the Lake Washington School District (LWSD) to the north. A combined total of seven school buses use SE 8th Street to pick up and drop off school children. (Testimony)

The subject property is within the attendance areas of Smith Elementary, Inglewood Middle and Eastlake High Schools. The LWSD has indicated that all public school children will be bussed to school and that the bus stop will be at the subdivision street's intersection with SE 8th Street. (Exhibit S-1.4)

The interior cul-de-sac will have sidewalks on both sides; the property's frontage on SE 8th Street will have a sidewalk. (Exhibit S-1.2) No further improvements are necessary to provide safe school walking conditions for the children that will reside in *Lake Vista*.

- 23. The adopted comprehensive plan contains many policies regarding environmental protection. The City has adopted Chapter 21A.50 SMC, Environmentally Critical Areas, to implement many of those policies. Chapter 21A.50 SMC regulates treatment of erosion hazard areas, frequently flooded areas, landslide hazard areas, seismic hazard areas, critical aquifer recharge areas, wetlands, fish and wildlife habitat conservation areas, wildlife habitat corridors, streams, and lakes/ponds. [SMC 21A.50.220 - .355]
- 24. The fish and wildlife habitat conservation areas provisions of SMC 21A.50.325 apply to properties which contain or, for certain of the provisions, are adjacent to such areas. "Fish and wildlife habitat conservation areas" are "areas that are essential for the preservation of critical habitat and species." [SMC 21A.15.468] In general, such areas are those "with which state or federally designated endangered, threatened, and sensitive species have a primary association." [SMC 21A.15.468(1)]

The subject property does not contain a fish and wildlife habitat conservation area as defined.

A bald eagle nest is located some 500 feet southwest of the subject property, between the *Joy Luck/Ashton Woods* subdivisions and East Lake Sammamish Parkway SE. (Exhibit S-1.15) Bald eagles are no longer listed as a Federally endangered species, but are still subject to the Federal Bald and Golden Eagle Protection Act. Bald eagles are still listed as a State priority habitat species. (Exhibit S-1.14 {pp. 11 and 12}) The U.S. Fish and Wildlife Service has issued an inadvertent "eagle take" permit which is required because the development will be within 660 feet of the eagle nest. Essentially, the permit requires that the "majority" of site work occur outside of the eagle's sensitive

¹⁴ Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

breeding season which is from January 31 through March 31 annually. Limitations on work during the breeding season are set forth in the permit. (Exhibit S-1.16)

Subsection 21A.50.325(3)(i) SMC provides that the Department “shall condition approvals of development activities allowed within or adjacent to a habitat conservation area or its buffers”. Such “[c]onditions may include ... (iv) Seasonal restriction of development activities”. [SMC 21A.50.325(3)(i)(iv)]

25. Sammamish’s State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Lake Vista* on December 13, 2013. (Exhibit S-1.47) The DNS was not appealed. (Exhibit S-1 {p. 2})
26. The Department has analyzed the *Lake Vista* proposal, finds it to be in compliance with applicable standards and requirements, and recommends approval subject to a number of conditions. (Exhibit S-1)
27. In response to questions from the Examiner, the Department offered the following clarifications/corrections to its recommended conditions of approval contained in Exhibit S-1: (Testimony)
 - A. Page 5. The Department acknowledged the absence of a condition requiring construction of a trail to Tract E. The Department indicated that a condition would be appropriate.
 - B. Page 8, Recommended Conditions 16 and 17. The Department acknowledged that it had created these conditions by paraphrasing two of the 23 conditions on the Federal eagle permit (Exhibit S-1.16) The Department does not know whether the Federal eagle permit restrictions apply only to initial development and construction of *Lake Vista* and its residences, or to all work undertaken by homeowners over time. The Department cited SMC 21A.50.325(3)(i) as the authority for these conditions.
 - C. Pages 9 and 10. The Department stated that as to Recommended Conditions 30 – 46, its intent is that Recommended Conditions 32 and 34 – 45 appear verbatim on the face of the final plat.
 - D. Page 10, Recommended Condition 41. The Department clarified that homes larger than 3,600 SF could be constructed on the proposed lots if either they were sprinklered or the area’s fire flow was increased to 1,750 gallons per minute or more.
 - E. Page 10, Recommended Condition 44. The Department stated that the second sentence and concluding sentence in this condition are directives for something to be done prior to final plat approval and should not appear verbatim on the face of the final plat.

- F. Page 10, Recommended Condition 46. The Department stated that this should not appear on the face of the final plat.
28. Sterley agrees to accept the conditions as recommended by the Department. (Testimony)
29. The SPWSD recommends that the east end of Tract C be “squared off.” (Exhibit S-1.8) The Department and Sterley had no objection to that suggestion. (Testimony)
30. Residents who live along SE 8th Street do not oppose subdivision of the subject property, but do oppose the current proposal. (Exhibits S-1.27 – S-1.46 and S-2 – S-4 and testimony) Neighborhood concerns generally fall into five topical areas:
- A. Density/lot size. The neighbors believe that the number of lots should be significantly reduced so that the lot sizes will better match those of the surrounding area. They argue that although the number of lots proposed appears to comply with applicable codes, it is out of character with the area and should not be allowed.
 - B. Home size/value. The neighbors want the houses built within *Lake Vista* to have comparable size and value to their homes. They believe that that will not happen with the small size of the proposed lots.
 - C. Surface water runoff concerns. Several seeps exist in the *Ashton Woods* area. The neighbors are concerned that seeps may also occur in *Lake Vista*. Chamberlin is very concerned that additional stormwater flows through the pipe beneath her property could cause damage. She does not want any runoff from *Lake Vista* to flow through the pipe beneath her property.
 - D. Traffic and parking on SE 8th Street. The neighbors indicate that the City allows ELST users to park on SE 8th Street. (The Department testified that no special provision for ELST user parking applies to SE 8th Street. Motorists may park along it just as along any other non-restricted City street.) The neighbors indicate that such parking sometimes reduces sight distance. In addition, the neighbors believe that congestion would be increased because of conflicts between traffic from the new homes and the number of school bus routes that use SE 8th Street. The neighbors also question the accuracy of Sterley’s TIA, suggesting that the traffic counts do not account for a home occupation (swimming lessons) operated during summer months at one of the residences at the south end of 197th Place SE.
 - E. Eagle nest impact. The neighbors want the eagle’s nest protected. (The eagle’s nest is closer to many *Joy Luck* and *Ashton Woods* residences than it will be to the nearest *Lake Vista* residence. (Exhibit S-1.15 {Fig. 3}))
31. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK¹⁵

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A preliminary subdivision is a Type 3 land use application. [SMC 20.05.020, Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision ..., he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision ... is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Additional review criteria for preliminary subdivisions are set forth at SMC 20.10.220:

When the examiner makes a decision regarding an application for a proposed preliminary plat, the decision shall include additional findings as to whether:

(1) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds,

¹⁵ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and

(2) The public use and interest will be served by the platting of such subdivision and dedication.

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on November 14, 2012.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. The neighbors' concerns are not founded on actionable bases. All evidence indicates that *Lake Vista* complies with those regulations enacted by the City against which preliminary subdivision applications are to be evaluated. The Conclusions of Law which follow will demonstrate that compliance.
2. Because of the significant interest in this application, the Conclusions of Law will be grouped by general topic. A basic exposition of the controlling review framework will be followed by discussion of the major issues of concern to the neighbors. Compliance with the specific criteria for approval will then follow, with discussion of conditions of approval concluding the analysis.

[RCW 36.70B.030, emphasis added] Thus, state law holds that a comprehensive plan is applicable during project review only where development regulations have not been adopted to address a particular topic. The regulatory assumption is that plans set a framework for subsequent regulations which serve to control development actions.

7. The state Supreme Court has also addressed this issue. In *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] the Court ruled that “[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code’s favor.

[*Mount Vernon* at 873-74, citations omitted]

8. Another applicable general principal is that a developer cannot be required to correct existing problems. A developer can be required to mitigate impacts caused by a proposed development. A developer may also be required to mitigate those situations where the proposed development will exacerbate an existing problem. To be legally supportable, a mitigation requirement must have a rational nexus to a problem created or exacerbated by the proposed development and the amount of mitigation required must be roughly proportional to the impact caused by the development.
9. The neighbors must understand that state law, as implemented by City ordinances, establishes a two-step process for the review and development of land subdivisions. By definition, a preliminary plat is a “true and approximate drawing of a proposed subdivision showing the general layout of streets, alleys, lots, tracts, and other elements of a subdivision required by” City code. [SMC 19A.04.260; see also RCW 58.17.020(4) which also states that “The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.”] Thus a preliminary plat is “preliminary,” “approximate,” and “general.” Once preliminary approval has been granted, detailed engineering plans are developed and construction occurs, leading to the final plat stage where the subdivision is recorded so that lot sales may occur.

The best analogy for the process would be the design of a building. When a client asks an architect to design a new house, the client does not expect (nor would the client want to pay) the architect to initially produce a full-blown set of construction plans for the very first design. Sketches lead to rough drawings which, once the client has agreed on the size, arrangement, style, etc. of the building, lead to a set of extremely detailed working drawings. The client has no need to see piping layouts,

wiring diagrams, roof framing plans, materials specifications, etc. when reviewing and approving the house layout. All of that detail comes later after the design has been agreed to.

The same is true with the land subdivision process. The preliminary subdivision process results in the approval of a design and layout for the development. That preliminary plan is then refined through the detailed engineering phase before actual construction begins.

In Washington State, the law provides that only the preliminary phase of the process is subject to public input through an open record hearing process. The subsequent engineering details are reviewed and approved administratively. The final plat is reviewed by the City Council in a closed record proceeding.

10. Finally, the neighbors must realize that the subdivision process in general and the preliminary subdivision process in particular do not regulate the size or value of future homes that will be built within the subdivision other than indirectly by setting the minimum size of each lot. Zoning regulations control property line setbacks, building height, lot coverage, etc. It is zoning that controls the maximum size of a house. It is the market that controls the value of the house.

Specific Neighborhood Concerns

11. Like it or not, the reality is that the subject property has been designated and zoned for residential development at up to six dwelling units per acre since before Sammamish became a city in 1999. The City Council has done nothing in the intervening years to change that zoning. The land owner has a reasonable, legally protected expectation to be able to develop the subject property in accordance with the zoning and other development regulations which apply to the property. It is way too late now to seek to change the zoning to something of lesser density.

Also of note is the fact that the SE 8th Street neighborhood is far from homogeneous in terms of either lot size or home size. The Seilers's 1.4 acre lot is more than six times larger than many of the *Joy Luck/Ashton Woods* lots. The other lots adjacent to the Seilers are nearly as large. The homes in *Joy Luck/Ashton Woods* are large, but not as large as those in the Seilers's short plat. And finally, the *Joy Luck/Ashton Woods* homes are, by and large, snugly fitted onto their lots, evidencing minimum side and rear set backs, whereas the homes on the Seilers's short plat lots have very generous set backs. The neighborhood is already physically diverse.

12. Zoning a site for development at six dwelling units per acre necessarily implies a conversion of the site from wildlife habitat to human habitat. That trade-off is implicit in urban development. Sammamish is a city and its plans and regulations envision substantial areas of urban density development. The subject property is one such area. Sammamish's policies may speak to preservation of certain natural characteristics of the area, but implementation of those policies depends upon the regulations adopted by the City Council. The adopted tree retention and environmentally critical areas regulations serve to determine which parts of the city's landscape will be preserved from urban development and to what extent they will be preserved.

13. The proposed yield (number of dwelling units) is one lot higher than “standard” due to two factors, only one of which is subject to the Examiner’s jurisdiction. The reduced right-of-way results in a larger net area, which in turn results in the possibility of additional density. The reduced right-of-way has been achieved through use of a “variation” as allowed under the PWS. The PWS clearly and unambiguously place authority for the approval of PWS variations under the City Engineer, not the Examiner. Therefore, the Examiner cannot affect that density factor.
14. Sterley’s inclusion of 10% of the environmentally critical area and its required buffer in the net area calculation is based upon the tree retention incentive of SMC 21A.35.220(2). The incentive contained in SMC 21A.35.220(2) may be awarded “subject to City review and approval”. Unlike PWS variations, this provision is within the Examiner’s jurisdiction when proposed as part of an application over which the Examiner has jurisdiction, such as a preliminary subdivision.¹⁶

That code section (relevant portions of which are quoted in Finding of Fact 14, above) allows subdivision developers to count “up to 10 percent” of the area of protected critical areas in the net area calculation if their proposal retains “35 percent or more of significant trees” outside critical areas and their buffers. Both elements of the formula contain sliding scale factors: 10% is the maximum incentive for saving at least 35% of significant trees. In *Lake Vista*, Sterley proposes to take the maximum credit by saving the minimum qualifying number of trees. That is not what the code envisions. If the City awards the maximum benefit for saving the minimum qualifying number, what incentive exists to encourage greater tree retention? The obvious answer is None.

On the other hand, if the incentive granted does not provide an applicant with at least one additional lot (one cannot have fractional lots for obvious reasons), then the incentive would fail: Why preserve more trees than minimally required if you aren’t going to gain any benefit in return? The obvious answer to this question is that there is no reason (unless you simply want to preserve trees).

Subsection 21A.35.220(2) SMC creates a sliding scale benefit: The more trees one saves over 35%, the more area may be counted in the net area calculation up to a maximum of 10%. In order for the incentive to work, a developer who saves the minimum should receive a minimum benefit of one additional lot. (If the benefit for minimum incentive preservation were zero, there would be no incentive to save 35% of significant trees.)

Lake Vista proposes to retain 35% of significant trees. That is 10% more trees than the basic standard requirement, but is also the minimum to qualify for the incentive. Instead of granting the full 10% incentive (in this case counting 9,562 SF of the critical areas as net area for density calculation purposes), it would be reasonable and wholly consistent with the concept established by the adopted code language to grant 10% of the maximum incentive or 1% (956 SF).

¹⁶ Interpretation of SMC 21A.35.220(2) is a matter of first impression.

However, the maximum lot yield with a 1% incentive is still 17 – the same yield realized without application of any tree retention incentive. (241,528 SF gross site area – 24,329 SF right-of-way – 95,642 SF critical areas and buffers = 121,557 SF net area + 956 SF tree retention incentive = 122,513 SF adjusted net area ÷ 43,560 SF = 2.81 acres adjusted net area x 6 dwelling units per net acre = 16.86 dwelling units, which rounds up to 17 dwelling units) The full 10% incentive yields just barely a one lot incentive. (121,557 SF net area + 9,564 SF tree retention incentive = 131,121 SF adjusted net area ÷ 43,560 SF = 3.01 acres adjusted net area x 6 dwelling units per net acre = 18.06 dwelling units, which rounds down to 18 dwelling units)

In this particular case, the math is such that nearly the full 10% incentive must be awarded to achieve even the smallest gain in yield. The City gets 10% more significant trees saved and the developer gets slightly less than a 10% increase in yield. Since the SMC encourages tree retention by offering increased yield, the one lot increase is consistent with the code's philosophy.

15. Neither house size nor cost are regulated through the subdivision process.
16. The City has adopted drainage control regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan drainage policies is, therefore, not permissible.

The area's geology results in perched water above the glacial till layer. Perched water may create seeps. In fact, the on-site wetland, located at the base of a short, but rather steep slope, may well have resulted from seeps. The 2009 KCSWDM factors perched water into its design requirements.

The evidence indicates that the Chamberlin drainage pipe is one of two outlets to Lake Sammamish for area drainage originating from east of East Lake Sammamish Parkway SE; the Chamberlin drainage pipe appears to be the primary outlet during much of the year. The Examiner has no authority to change that historical reality. Nor can the Examiner order Sterley to not allow his drainage to follow its natural course. On the other hand, Sterley has chosen to apply Level 3 Flow Control which means that the on-site detention system will be designed to replicate existing, undeveloped conditions.

The evidence demonstrates compliance with the adopted stormwater control regulations with respect to runoff generated on the subject property.

17. The City has adopted traffic impact regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan traffic impact policies is, therefore, not permissible.
18. The volume of traffic on SE 8th Street is far below the street's theoretical capacity. The traffic counts were made during the summer, so it can be reasonably assumed that vehicles associated with the swimming lesson business were in the mix. (School buses were likely not in the mix, but seven buses

in the morning and afternoon would add only 28 trips to the ADT total. And it is unclear from the record how many of those would actually occur during the peak traffic hour on the street system.)

The developer of *Lake Vista* cannot be required to install stop signs in neighboring subdivisions. If the neighbors want stop signs to better control their traffic within their subdivision(s), they should approach the City and ask for stop signs to be installed.

Regularly allowed parking along SE 8th Street is not a result of *Lake Vista*. *Lake Vista* cannot be conditioned on prohibition of such parking. If parking on SE 8th Street is creating a safety problem, then the neighbors should approach the City and ask for parking restrictions.

19. The City has adopted wildlife habitat regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan wildlife habitat policies is, therefore, not permissible.
20. The bald eagle is a state-listed sensitive species. [WAC 232-12-011(2)] Therefore, the requirements of SMC 21A.50.325 apply. However, the testimony from the Department indicates that it doesn't really know how the Federal eagle permit restrictions are supposed to be applied. Further, the conditions suggested by the Department essentially quote only two of the numerous conditions of that permit. The Examiner concludes that it is preferable under the circumstances to replace the suggested conditions with a simple condition that incorporates the Federal eagle permit into the subdivision requirements.
21. The three McRae letters (Exhibits S-1.28a, S-1.28b, and S-3) raise the major issues that all other commenters raised, all of which have been discussed above. In addition, McRae raises a number of other assertions/concerns which deserve individual response.

In Exhibit S-1.28a he cites Comprehensive Plan Policy LU P-8.1 as a basis for requiring larger and fewer lots. But by its very language, that policy does not apply to development application review: "Development standards for residential neighborhoods should" (Emphasis added) The policy is expressly oriented towards the creation of development standards, not project review. Title 21A SMC contains the development standards that the City has developed to control land uses in the City. The evidence demonstrates compliance with applicable provisions of Title 21A SMC. (In Exhibit S-1.28b McRae acknowledges that Sterley has "the right to design to the maximum the regulations will allow....")

In Exhibit S-3 McRae asserts that the proposal is subject to compliance with RCW 36.70.680. That assertion is incorrect. Chapter 36.70 RCW, Planning Enabling Act, applies only to "a county or region", it does not apply to cities. Sammamish is incorporated under the authority of Title 35 RCW, Cities and Towns. [SMC 1.01.010] (Sammamish must comply with Chapters 36.70A RCW (Growth Management Act), 37.70B (Local Project Review Act), and 36.70C (Land Use Petition Act), but not Chapter 36.70 RCW.)

He also asserts there will be a “lack of or minimal length of driveways” in the new subdivision. (Exhibit S-3 {list item 6}) That is factually incorrect. The zoning code requires a 20 foot setback between garages and the right-of-way in the R-6 zone. [SMC 21A.25.030(A)(7)] The proposed plat clearly reflects that requirement. (Exhibit S-1.2) There will be driveways and the opportunity to park in them on each lot (just as there presumably is in *Joy Luck* and *Ashton Woods*).

He objects to the sidewalk frontage improvement along East lake Sammamish Parkway SE as being “simply ignorant of the community around the development.” (Exhibit S-3 {list item 8}) The PWS establish standards for all new streets in Sammamish and for frontage improvements along existing streets. The standards for arterials require curb and gutter, planter strip, and sidewalk on both sides of the street. [PWS Table 1 and Figs. 01-01 – 01-03] That East Lake Sammamish Parkway SE was built before the City was incorporated and before the current standards were developed does not mean that new construction and new development should not meet the current standards. Further, SE 8th Street and the *Joy Luck/Ashton Woods* streets all include curb, gutter, and sidewalks. (Exhibit S-1.3)

Required Conclusions

22. Section 20.10.200 SMC sets forth general requirements applicable to all Examiner decisions. The requirement to find compliance with the comprehensive plan is constrained by the legal principles set forth in preceding Conclusions of Law. The preponderance of the evidence indicates compliance with all applicable regulations.
23. Under SMC 20.10.220(1), the City is required to determine if “appropriate provisions” are present in the subdivision application for a whole host of topical areas. The courts, generally speaking, do not allow a municipality unbridled discretion in determining what is “appropriate”. Rather, courts generally hold that in order to preserve the substantive due process rights of all the parties, decisions must be based upon officially adopted ordinances and policies. Application of that concept to the items enumerated in SMC 20.10.220(1) leads to the position that “appropriate provisions” are present in any given topical area if the proposal meets the requirements of adopted law and policy relating to that area. Common sense must be used where there are no guiding adopted policies.
24. The preponderance of the evidence demonstrates compliance with all applicable regulations addressing the subjects listed in SMC 20.10.220(1). (See especially Findings of Fact 11 – 14, 16, 17, and 20 - 22, above.)
25. There must be some criteria by which to judge whether a proposed subdivision serves “the public health, safety, and general welfare” and furthers the “public use and interest”. The content of adopted City policies and regulations form reasonable criteria. *Lake Vista* meets all applicable review criteria. Therefore, it must also be concluded that it serves the public health, safety, and welfare and furthers the public use and interest.¹⁷

¹⁷ It would be illogical to conclude that a project which met every established standard of review was nevertheless contrary to public health, safety and welfare. If such were the case, then the adopted standards must be woefully deficient. Even

26. Here, again, the preponderance of the evidence demonstrates compliance with all applicable regulations. Thus, it must be concluded that *Lake Vista* would serve the public health, safety, and general welfare and further the public use and interest.

Recommended Conditions

27. The recommended conditions of approval as set forth in Exhibit S-1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
- A. A preliminary subdivision embodies the concept of approval of a specific development proposal: the preliminary plat. Preliminary subdivision evaluation is based upon the specific preliminary plat submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plat which is being approved. The Department recommendation as drafted does not do so. Exhibit S-1.2 constitutes the preliminary plat and supporting plans which should be approved. Reference to that exhibit will be incorporated into a new condition.
 - B. Recommended Conditions 16 and 17. As noted previously, these conditions will be merged and simplified to simply incorporate the Federal eagle permit conditions.
 - C. Conditions 30 – 45. The formatting of these conditions will be changed to clearly indicate which statements are to appear verbatim on the face of the final plat.
 - D. Recommended Condition 41. This condition will be changed to say what is actually meant.
 - E. Recommended Condition 46. This is not a condition that should appear on the face of the final plat for reasons noted previously. However, the Department has historically recommended a condition in the “General Conditions” section that alerted developers to the expiration date of the preliminary subdivision approval. Given the complexity of current state law regarding the approval period of preliminary subdivisions, including such a statement in the approval is, at the very least, helpful.
 - F. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1 – 6, 9 - 12, 19, 20, 24, 25, 30 - 32, and 43 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
28. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

if some believe that the adopted standards are deficient, there is no basis in this case to conclude that compliance with those standards is not sufficient: the application is vested to the standards which existed when it was deemed complete regardless of any subsequent changes. New standards would apply to new applications but not to applications in process.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** preliminary subdivision approval for *Lake Vista* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued February 25, 2014.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁸

Luay Joudeh
Rich Seiler
Bruce Morehead
Tom Nielsen
Tawni Dalziel
Mark Jacobs

Rob Garwood
Ann Chamberlin
Mohamed Jawad Khaki
Heinz Maine
Gordon Torrey

¹⁸ The official Parties of Record register is maintained by the City's Hearing Clerk.

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

CONDITIONS OF APPROVAL
LAKE VISTA
PLN2012-00046

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following special conditions:

General Conditions:

1. Exhibit S-1.2 is the approved preliminary plat (and supporting plans); PROVIDED that the east end of Tract C may be revised if required by the Sammamish Plateau Water and Sewer District and approved by Planning and Public Works. Revisions to approved preliminary subdivisions are subject to the provisions of SMC 19A.12.040.
2. For the purpose of ensuring compliance with all conditions of approval and the standard requirements of the SMC, the Plator shall provide financial guarantees in conformance with Chapter 27A SMC and PWS.10.050.K. All improvements required pursuant to the PWS, SMC, or other applicable regulations must be installed and approved, or bonded, as specified for plats in Chapter 19A.16 SMC.
3. The developer or subsequent owner(s) shall comply with the payment of street impact fees in accordance to Chapter 14A.15 SMC.
4. Pursuant to Chapter 19A.12 SMC, preliminary plat approval shall be null and void if any condition is not satisfied and the final plat is not recorded within the approval period of eighty-four (84) months; provided the Plator may file for an extension as permitted by code.

Prior to Final Construction Approval:

5. Unless otherwise approved by the City Engineer, all construction and upgrading of public and private roads shall be done in accordance with the PWS and the most currently published WSDOT Standard Specifications.
6. The internal plat road serving more than 4 dwelling units shall be consistent with the local road standards in accordance with PWS Table 1, PWS Figure 01-05, and City Ordinance 2005-191. The City Engineer has approved a modified pavement width of 28 feet, 50 foot ROW dedication, and "No Parking" on one side. The City Engineer may modify additional standards based on engineering judgment during final engineering review.
7. East Lake Sammamish Parkway SE is classified as a minor arterial. In accordance to PWS.15.110, half street frontage improvements consistent with PWS Table 1 and PWS Figure 01-02 are required with 3.5 feet of ROW dedication. Half-street grind and asphalt overlay may be required as part of the

final engineering or inspection. Half-street improvements shall extend to the intersection of E Lake Sammamish Parkway SE and SE 8th Street, or as approved by the City Engineer.

8. SE 8th Street is classified as a local road. In accordance with PWS.15.110, half street frontage improvements and right-of-way dedication consistent with PWS Table 1, PWS Figure 01-05, and City Ordinance 2005-191 are required. Half-street grind and asphalt overlay may be required as part of the final engineering or inspection. Half-street improvements shall extend to the intersection of East Lake Sammamish Parkway SE and SE 8th Street, or as approved by the City Engineer.
9. Drainage plans, Technical Information Reports (TIRs), and analysis shall comply with the 2009 King County Surface Water Design Manual (KCSWDM) and the City of Sammamish Stormwater Management Comprehensive Plan.
10. Wetland hydrology shall be maintained consistent with the requirements of the 2009 KCSWDM. This may result in modifications to plat layout and the design of the stormwater system for the proposed project.
11. Joint use driveway in accordance with PWS.15.090 shall be used for access to Lots 17 and 18.
12. Private road standards in accordance with PWS.15.170 shall be used for access to Lots 4, 5, and 6.
13. The cul-de-sac shall be constructed in accordance with PWS.15.120 and Figure 02-33 and approved by the Fire Marshal. The Fire Marshal has approved the design of a 90 foot paved diameter cul-de-sac with rolled curbs, reinforced sidewalks and no parking signs in the cul-de-sac. The cul-de-sac shall include a minimum 6 foot wide public, non-motorized access easement connecting the cul-de-sac to East Lake Sammamish Parkway SE.
14. All new street construction for the plat shall include illumination pursuant to Article 5 of the PWS or as approved by the City Engineer. Maintenance of illumination along all local and private roads shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development.
15. Survey monuments shall comply with PWS.15.470.
16. Prior to acceptance into the Maintenance and Defect period, the storm drain system shall be jetted, cleaned, and vactored and the system shall be televised for inspection.
17. Prior to acceptance into the Maintenance and Defect period, project closeout documents including as-builts and final corrected TIR shall be submitted to Public Works for approval.

18. The requirements of SMC 21A.50.325(3)(i) are met by compliance with the terms and conditions of U.S. Fish and Wildlife Service Permit MB14262B-1 (inadvertent eagle take permit), as now exists or as may hereafter be modified.
19. At the time of construction no retained trees will be allowed to be removed unless the applicant reduces the plat design by the number of lots that were received for the 35% tree retention amount the developer proposed.

Prior to or Concurrent with Final Plat Approval:

20. 3.5 feet of the development frontage along East Lake Sammamish Parkway SE shall be dedicated as public right-of-way to the City. Construction on East Lake Sammamish Parkway SE shall be substantially completed or bonded for as approved by the City Engineer.
21. 5 feet of the development frontage along SE 8th Street shall be dedicated as public right-of-way to the City. This width may be adjusted during final engineering review based on approved improvements. Construction on SE 8th Street shall be substantially completed or bonded for as approved by the City Engineer.
22. The internal plat road plus the cul-de-sac shall be dedicated as public right-of-way to the City of Sammamish.
23. Joint use driveways shall be bonded for or constructed under the Site Development permit.
24. A Homeowners Association shall be created to be responsible for maintenance of all common areas. The covenants and restrictions of said homeowners association shall be filed for record at King County. Maintenance responsibilities shall be addressed in the Homeowners Association covenants and restrictions.
25. At a minimum, all stormwater facilities shall be constructed, online, and operational. This includes construction of road ATB, curb, gutter, stormwater conveyance system, water quality treatment systems, and stormwater pond/vault. The final lift of asphalt may be bonded except as indicated.
26. All new signs required in the public right-of-way must be installed by the City of Sammamish Public Works Department or at the direction of the City of Sammamish Traffic Engineer. Procurement and installation shall be paid for by the Developer. The contractor shall contact the Public Works Inspector to initiate signage installation a minimum of 6 WEEKS PRIOR TO FINAL PLAT. Temporary street signs may be required for internal plat roads for emergency vehicle access. "No Parking" signs shall be installed prior to final plat. "No Parking" signs shall be required on all proposed street and private roads with clear widths of 20 feet or less.

27. A licensed surveyor shall survey and stake all storm drain facilities and conveyance lines with associated easements and dedications not located within the public right-of-way. Public Works Inspector shall inspect and approve locations prior to final plat and easement recording.
28. All sensitive areas signs shall be installed.
29. Soil amendments shall be provided or bonded for in all common areas of the plat consistent with the requirements of the 2009 KCSWDM City of Sammamish Addendum.
30. A Public Works performance bond shall be posted consistent with the 2009 KCSWDM.
31. Trees identified on the tree retention plan of the preliminary plat have been retained pursuant to the provisions of SMC 21A.35.210. All retained trees shall be clearly tagged with numbers corresponding to the tree retention plan on file with the City. All trees to be retained in groups will be placed in tracts or Tree Retention Easements (T.R.E), except for individual trees on individual lots. The developer shall record a copy of the tree retention plan as part of the final plat.
32. A pedestrian trail meeting all applicable standards of Chapter 21A.50 SMC shall be constructed from the SE 8th Street sidewalk across Tract D to and into Tract E.

Conditions to Appear on the Face of the Final Plat:

33. The developer shall include a note regarding the payment of all traffic impact fees on the subject site consistent with the provisions of the Chapter 14A.15 SMC.
34. If the stormwater vault is designed under a recreation tract, an easement shall be provided for City access, inspection, maintenance, replacement, and repair of stormwater facilities within the tract. Otherwise, the tract shall be dedicated to the City as a Stormwater Tract.
35. *“Maintenance of landscape strips along SE 8th Street, East Lake Sammamish Parkway SE, and the internal plat road shall be the responsibility of the Homeowners Association. Under no circumstances shall the City bear any maintenance responsibilities for landscaping strips created by the plat.”*
36. Covenant and easement language pertaining to individual lot and tracts with flow control BMPs shall be shown on the face of the final plat. Public Works shall approve the specific language prior to final plat.
37. *“All landscaped areas of the plat and individual lots shall include a minimum of 8-inches of composted soil amendment.”*
38. *“Maintenance of illumination along all local and private roads shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development.”*

39. *"No lots shall have direct driveway access onto East Lake Sammamish Parkway SE or SE 8th Street."*
40. *"Metal products such as galvanized steel, copper, or zinc shall not be used in all building roofs, flashing, gutters, or downspouts unless they are treated to prevent metal leaching and sealed such that contact with storm water is prevented."*
41. *"For all lots which contain or are adjacent to infiltration or dispersion trenches, these lots shall be graded such that top of trench is below bottom of foundation."*
42. *"Unless directed to individual lot flow control BMPs, all building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain system as shown on the approved plat Site Development permit on file with the City of Sammamish. The connection to the storm system shall be through a perforated tightline pursuant to the 2009 King County Surface Water Design Manual. The approved Site Development permit shall be submitted with the application for any building permit. All connections of the drains shall be constructed and approved prior to final building inspection approval."*
43. *"Pursuant to City of Sammamish Municipal Code Chapter 13.15, a surface water system development charge shall be paid at the time of building permit issuance, for each new residential dwelling unit."*
44. *"Homes shall be limited to 3600 square feet or shall be sprinklered unless fire flow equal to or greater than 1,750 GPM can be certified by the Sammamish Plateau Water and Sewer District."*
45. *"Lots 2-18 are subject to the park impact fees in effect at the time of building permit issuance."*
46. *"Pursuant to SMC 21A.105, fifty percent of the school impact fees will be paid at final plat. Fifty percent of the school impact fees, plus an administrative fee shall be paid prior to building permit issuance on Lots 2-18."*
47. *"Retained trees subject to the tree protection standards of SMC 21A.35.230 have been tagged consistent with an approved tree retention plan. Removal of these trees is prohibited unless the tree is removed to prevent imminent danger or hazard to persons or property, subject to a clearing and grading permit approved by the City of Sammamish. Trees removed subject to this provision shall be replaced in compliance with SMC 21A.35.240."*
48. *"Development of this plat was subject to the terms and conditions of an Eagle Management Plan approved by the U.S. Department of Fish and Wildlife. (Permit Number MB14262B-1) Questions about the continuing applicability of that permit should be directed to the issuing Federal agency."*